and the Minnesota statute falls within the class. *Gilbert* v. *Minnesota,* (U. S. S. Ct., Adv. Opinions, Jan. 15, 1921, p. 146).

The decision is featured by a strong dissent on the part of Mr. Justice Brandeis chiefly on the ground that Congress has exclusive power to legislate concerning the Army and Navy of the United States, and to declare war. He concludes, therefore, that the field is closed to the states even in the absence of federal legislation, and that here, in any event, the Federal Espionage Law constituted such an entrance into the field as to preclude state action. The majority of the court holds that technical considerations and language cannot govern; that state and national interests are so interwoven in carrying on war as to give the former the power to render legislative aid. The decision seems sound. The principles governing the exclusiveness of federal power in particular cases have been worked out to some extent in the fields of commerce and bankruptcy. It was early settled in both that the grants to the Federal Government were not exclusive in all cases, in the absence of federal action. *Sturges* v. *Crowninshield,* 4 Wheat. 122; *Cooley* v. *Board of Wardens,* 12 How. 299. The view sanctioned, was that the grant without action is exclusive only where uniformity is required. In the field of bankruptcy there seems to have been considerable doubt at first as to whether any state legislation remained operative after the passage of a federal act. 45 L. R. A. 177. The rule now seems settled, however, that state laws may stand even though the federal act covers the same ground if they do not conflict therewith, and are in aid of the general policy. *Stellwagen* v. *Clum,* 245 U. S. 605. A partial entrance into the field under the power to regulate commerce does not put an end to state legislation where there is no need for uniformity. *Reid* v. *Colorado,* 187 U. S. 137. The principle which should govern seems clear. Both state and federal governments have no purpose but to promote welfare, and ordinarily what promotes the welfare of one does so for the other. Where this ceases to be true, the line should be drawn, and only there. A statute prohibiting the debasement of the flag to trade uses, has been sustained on the ground that fostering a feeling of patriotism toward the nation necessarily promotes the welfare of the state. *Halter* v. *Nebraska,* 205 U. S. 34. But where uniformity is absolutely essential, state and national welfare in the narrow sense, cease to be identical, and the former must of course yield. There the absence of any legislation by Congress may well be made the basis for a presumption that the paramount legislative policy is against it. Elsewhere, as in the principal case, the power of the states should be checked only when there is a real conflict, not a mere occupation of the same field.

CONSTITUTIONAL LAW—VALIDITY OF ORDINANCE TO PREVENT "SCALPING" OF THEATRE TICKETS.—A San Francisco ordinance makes it unlawful to engage in the business of re-selling theatre tickets without a license, costing $300.00 a month. Having been arrested for violating this ordinance, Dees sought his release by a writ of habeas corpus, on the ground that the ordinance was unconstitutional. *Held,* the ordinance as a revenue measure is unreasonable

and oppressive; as an exercise of the police power it is an unwarranted interference with the liberty of citizens; petitioner discharged. *Ex parte Dees* (Cal., 1920), 194 Pac. 717.

In the principal case the license tax imposed was $300.00 a month, while the gross income from the petitioner's business was but $600.00 a month. The court rightfully held it oppressive, unreasonable and prohibitory, and, being such, invalid. Moreover such a license tax for revenue was forbidden by the Charter of San Francisco. It was properly recognized that the ordinance purporting to be a revenue measure was in fact an attempted exercise of the police power. This was made clear not only by the excessive rate of the license fee but also by reason of the ordinance making engaging in this business alone, unlawful, unless with a license. The question really becomes then, whether this ordinance was a proper exercise of the police power. That the business of selling theatre tickets at a profit is no more immoral nor injurious to the public welfare or convenience than is the sale of any article of merchandise at a profit, is the opinion expressed in *Ex parte Quarg,* 149 Cal. 81. In every state in which the question has been before the courts, statutes prohibiting the scalping of theatre tickets have been held unconstitutional, *Ex parte Quarg, supra; People* v. *Steele,* 231 Ill. 340; *People* v. *Newman,* 180 N. Y. S. 892. Speculation in theatre tickets is considered a lawful occupation and statutes prohibiting it, to violate the due process clause. On the ground that the business is proper, neither immoral nor injurious to the public, it was held in these cases to be an improper exercise of the police power to prohibit or unreasonably regulate or interfere with such sales. To do so is declared an unwarranted interference with the liberty of the citizen, not based upon a reasonable consideration of the public health, morals, safety, or welfare, nor of the cost of police supervision. *In re Dees* (Cal.), 189 Pac. 1050. Statutes forbidding railroad ticket scalping have been held valid in nearly every state. *Burdick* v. *People,* 149 Ill. 600; *Fry* v. *State,* 63 Ind. 552. New York alone has refused to recognize the validity of such a statute. *People* v. *Warden,* 157 N. Y. 116. The distinction drawn between statutes dealing with theatre and railroad tickets, is that the railroad is a business affected with a public interest and the public welfare requires its regulation by means of the police power, while a theatre is a private business not so affecting the welfare of the public as to demand police regulation. *People* v. *Steele, supra.* It is submitted that the theatre is a business clothed with a public interest, coming within the requirements set out in *Munn* v. *Illinois,* 94 U. S. 113, as property used in a manner so as to make it of public consequence and affect the community at large. The moving picture theatre is regulated under the police power by license and censorship, because it is a fit subject for regulation. The courts must recognize the place of the modern theatre and class it among those businesses which are affected with a public interest and are subject to the police regulation.